

**Report of the Council Ethics/Relations Committee**

February 1999

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February 19, 1999

Honorable Mayor Emanuel Cleaver II:

You established the Council Ethics/Relations Committee to develop guidance for the full City Council on the proper interaction between the council and city staff and to improve ethics in city government. We appreciate the importance of this responsibility and have diligently sought to determine the best method for councilmembers to communicate with city staff and to identify steps that should be taken to address the problems of inappropriate behavior by councilmembers and city staff.

The committee met with former mayors, councilmembers, city staff, and members of the public on ten separate occasions during 1997 and 1998. We also reviewed reports and other documents related to the committee's agenda and conducted a limited literature review on the issues of ethical behavior and protection mechanisms. Using staff support from the City Auditor's Office, a matrix was developed to assist in identifying areas where current rules and codes of conduct exist, and activities where additional guidance is needed. This report identifies the issues discussed during the committee meetings and our conclusions and recommendations.

The committee found that most of the city's current rules govern the process in which the council passes legislation, setting policy for city staff to follow. For other activities, the committee found varying amounts of guidance.

In the area of oversight and policy development, the committee recognizes the importance of these activities, and notes that the council's responsibility for these efforts is conveyed by the City Charter. The committee also concludes that neither the council nor city staff is totally "in charge" at city hall. Instead the council operates in partnership with the city manager and his staff, establishing policies for the staff to follow, then stepping back to allow staff to actually implement those policies. While council should leave implementation efforts to the city manager, they have a responsibility to be aware of how this work is being accomplished, asking questions when needed, primarily in an open public forum.

Communications between individual councilmembers, city staff, and the public was another area where the committee understood the importance of such efforts but also recognized the potential for misunderstandings and abuse. Although the city's code of ethics requires all city staff to cooperate with the council, during these communications, opportunities for misunderstandings exist. While the committee is reluctant to prohibit conversations between individual councilmembers, the city manager, and any city staff, we do recommend councilmembers use discretion, directing most of


their communications to the city manager, his assistants, department heads, or their designees. Also, councilmembers should consider other communication channels such as the City Auditor's Office or the City Action Center to assist them in their efforts to obtain information on city operations.


On the issue of individual councilmembers giving direction to city staff, the committee recommends this action be vigorously discouraged. Only the full council can give direction, primarily through legislation to establish city policy. Operating outside of formal channels subverts the legislative process and unfavorably affects all of city government, casting doubts on the ethics of the City Council and the entire city government.

We have included seven recommendations for your consideration. They include the establishment of job descriptions for councilmembers, improvements in the council orientation process, ethical training efforts, and protection mechanisms, a recommendation to review the role of the Municipal Ethics Commission in investigating allegations of unethical behavior by councilmembers and other senior officials, and a recommendation to review legislation regarding lobbyist activities.


The committee thanks those individuals who appeared before them and those who provided staff assistance.

Council Ethics/Relations Committee

  
George Blackwood  
Chairman

  
Ed Ford  
Councilmember

  
Paul Danaher  
Councilmember

  
Aggie Stackhaus  
Councilmember

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## INTRODUCTION

In his 1997 state of the city address, Mayor Emanuel Cleaver II announced the creation of a Council Ethics/Relations Committee charged with developing guidance for the full City Council on the proper interaction of the council and city staff. According to the mayor:

The goal must be to strike that delicate balance between appropriately proclaiming policy and inappropriately directing the disbursement of dollars. In an attempt to respond to this delicate matter, we must erect a well-defined wall between policy-making and administrative undertaking. This will not be easy to develop. Many of us grow uneasy at any perceived encroachment of the political on the magisterial or the magisterial on the political. Sometimes it is not clear which is encroaching on which. . . Good fences, the poet said, make good neighbors. Fences require reflection every now and then, and even rebuilding. . . or they don't stay fences.

The committee found that the mayor's "wall of separation" between policy-making and administrative undertaking is not solid. While a separation exists, there is some give-and-take depending on the situation, participants, and tasks being accomplished. As long as boundaries, guidelines, and rules of conduct are present, understood by everyone, and enforced, the lack of a truly solid "wall of separation" does not preclude "good government."

This report discusses behaviors and interactions of elected city officials and city staff. The report also makes recommendations to better define and encourage ethical behavior, and to more effectively discourage, expose, and sanction behavior that is outside the ethical boundaries.

### Committee Activities

Under the direction of Mayor Pro Tem George Blackwood, a committee consisting of councilmembers Ed Ford, Aggie Stackhaus, and Paul Danaher held a series of meetings with former mayors, councilmembers, city staff, and members of the public who have had occasion to participate in or observe government activities.

After an organizational meeting on September 17, 1997, the committee met 10 times. Participants included:

- former City Councilmembers Jerry Riffle and Mike Burke
- former mayors Charles Wheeler and Richard Berkley
- Dr. John Nalbandian, professor of public administration at the University of Kansas, former mayor of the City of Lawrence, Kansas, and City of Lawrence councilmember
- Jim Nutter, chairman of the Citizens Budget Review Commission
- Rich Hood, of *The Kansas City Star*
- former City Manager Robert Kipp
- former Public Works Department directors George Satterlee and Myron Calkins
- Rabbi Michael R. Zedek, chairman of the Red Flag Commission
- U.S. Attorney Stephen Hill



The committee also reviewed reports and other documents related to its agenda. These documents included the following:

**City Auditor's Office memorandum.** Resolution 950167 directed the Municipal Officials Ethics Commission to make recommendations to the City Council for ensuring that staff are free to act and make recommendations without interference or intimidation from individual elected officials. As part of this effort, the City Auditor's Office provided information on the role of elected officials and paid staff in a memorandum to Commission Chairman Frank Sebree (June 26, 1995).

**Red Flag Commission Report.** Mayor Cleaver established the Red Flag Commission in response to a wave of public corruption prosecutions involving elected city officials. The mayor asked a group of seven business and community leaders to examine the "process, procedures, and monitoring of contracts at City Hall." The resulting report made recommendations directed at improving contracting procedures, promoting open ethical government, and defining the proper relationship between the City Council and city staff (January 1997).

**Law Department memorandum.** The Law Department provided the city auditor with a detailed list of ordinances, resolutions, or other rules that control the relationship between members of the City Council and the staff (October 1, 1997).


***Performance Audit: Implementation of the Red Flag Commission's Recommendations.*** The city auditor released an audit reviewing the implementation of the recommendations of the January 1997 Red Flag Commission report (December 14, 1998).

### **Council Activities Defined**

Members of the City Council act in two ways: as members of a body and as individuals. As members of the full council, they legislate, and they oversee city operations. As individuals, they gather information, and occasionally, may attempt to direct individual city employees to take actions. The primary responsibilities of the City Council are included in the first three activities: legislating and providing oversight as a body, and gathering information as individuals. It is the fourth activity—individually directing city employees—that is inappropriate.

The committee's report is organized around the four activities. The City Auditor's Office developed a matrix depicting the range of City Council activities. The matrix views these activities along two dimensions – whether councilmembers are acting individually or as a body, and whether they are engaged in gathering information or giving direction. (See Exhibit 1.)

## Exhibit 1. Primary City Council Responsibilities

	Gathering Information	Giving Direction
Entire City Council	Oversight and Policy Development	Legislation
Individual Councilmembers	Communications with Staff, the Public, and other Councilmembers	Individual Councilmembers Directing City Staff 

**Legislation.** The entire City Council passes legislation, providing direction to city staff on the operation of city government. The council adopts ordinances legislating changes to the city code or passes resolutions which typically communicate the council's position on issues and sometimes reflect changes in city policy. Other efforts include goal setting, establishing priorities, and strategic planning type activities that require the council to act collectively. Most current rules and codes of conduct address legislative activities.

**Oversight.** The council as a whole monitors the work of city staff and gathers information for improving government operations through legislation. Gathering information is part of this activity; however, requests for information are issued by the entire council or one of its committees, not by individual councilmembers.

**Communication.** Ideally, information goes in both directions and takes place between individual councilmembers, between councilmembers and city staff, and between councilmembers and the public. Much of the communication between councilmembers, the public, and city staff involves citizen requests for information or complaints about city services. Little guidance exists about the appropriate role of councilmembers in this area.

**Individual direction.** Occasionally, members of the City Council, acting as individuals, give direction to city staff. This is inappropriate behavior and should be vigorously prohibited. Several of the improprieties punished since the election of 1991 involve this type of activity.

The extent of guidelines, codes of conduct, laws and regulations that govern behavior vary among the four activities in the matrix. The remainder of the report discusses each activity, current rules for behavior or codes of conduct related to the area, issues and dilemmas faced in each activity, and suggestions for addressing the problems. At the end of the report is a set of recommendations developed by the committee for City Council consideration.

## LEGISLATION: DECIDING AS A BODY

Members of the City Council can only enact legislation, adopting ordinances and passing resolutions as part of the full body. Most of the existing guidance relating to ethics and behavior concern the City Council's role as legislators. In general, the ethics guidelines encourage decision-making to be open, require that conflicts of interest be disclosed, and limit council involvement in personnel matters. The City Charter also establishes a distinction between individual councilmembers and the entire City Council, namely that the ability to direct staff is vested in the council as a whole.

### Existing Rules and Codes of Conduct

Guidelines for city staff and the City Council are contained in state statutes, city codes, resolutions and the charter: staff must also follow administrative regulations.

**State law.** The state statute that addresses open meetings is commonly referred to as the Sunshine Law.<sup>1</sup> The law applies to meetings of the council, council committees, and councilmembers. According to a memorandum from a former city attorney, "every meeting of a 'public governmental body,' must be open to the public unless there is a specific exception in the Sunshine Law."<sup>2</sup>

**City regulations.** The city charter and Code of Ordinances address the proper role of the City Council. Section 6 of the charter states:

The powers of the city, except as otherwise provided in this charter, shall be vested in a council and shall be exercised as herein provided.

Section 2 of the charter explains that the council exercises its authority through the enactment of ordinances:

All powers conferred upon the city by this charter, or by the general laws of the state, shall be exercised by ordinance, except as otherwise provided by this charter or by law.

The charter limits council involvement in personnel issues. Section 28 addresses the city attorney and the Law Department, indicating that although the City Council has no role in hiring the city attorney, the city attorney can only be fired by the council upon approval by the city manager. Similarly, assistant city attorneys can only be fired by the City Council with approval by the city attorney. Finally, section 76.5(f) of the charter states that the internal auditor, once appointed, can only be fired by the mayor and council on recommendation of the city manager.

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<sup>1</sup> Missouri Revised Statutes, Chapter 610.

<sup>2</sup> Kathleen Hauser, *Ethical Issues for Public Service: Conflicts, Financial Disclosure, Sunshine Law: 1995-1996*, Law Department.



The charter provides similar protections for other city staff. Section 21 states:

Neither the council nor any of its committees or members shall have the authority to control the appointment or removal of any person to or from office or employment by the city manager or any of his subordinates.

Finally, to reinforce the separation of the City Council from employment decisions, a person seeking municipal employment is disqualified if a member of the City Council is asked for assistance. Section 2-1014(a) of the city code states:

Canvassing of members of the city council, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to the municipal service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the city council.

The city's Code of Ethics<sup>3</sup> applies to elected officials and city staff. In general, the code prohibits people from participating in public business if they have a direct or indirect conflict of interest. Few references in this text, however, relate specifically to the relationships between staff and council. The code discusses the responsibilities of public office, orientation training, equal treatment, conflicts of interest, acceptance of gifts, and penalties for violating these provisions.

**City manager is responsible for administrative efforts.** The charter establishes the responsibilities of the city manager for supervision of city staff and support of the City Council. According to section 22:

It shall be the duty of the city manager to supervise the administration of the affairs of the city; to see that the ordinances of the city and the laws of the state are enforced; to make such recommendations to the council concerning the affairs of the city as may seem desirable; to keep the council advised of the financial condition and future needs of the city; to prepare and submit to the council the annual budget estimates; to prepare and submit to the council such reports as may be required by that body; and to perform such other duties as may be prescribed by this charter or be required of him by ordinance or resolution of the council.

## **OVERSIGHT: MONITORING, NOT ADMINISTERING**

The council is responsible for oversight and policy direction. The city manager ensures policies are carried out. Government works best when the council does not attempt to get involved in administrative activities beyond what is necessary to perform its oversight role. Problems can develop, however, from differences in the perceived level of City Council involvement in administrative activities.

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<sup>3</sup> Code of Ordinances, Kansas City, Missouri, Sections 2-1011 through 2-1019.

## **Council Powers Provide for Oversight**

The city charter gives the council authority for administrative oversight. The broadest power of the City Council may be that of investigating municipal affairs. Councilmembers have access to all records of the city, according to section 18 of the charter:

Members of the council shall at all times, for the purpose of inspection, have free access to the books, papers and records of the city in all public offices.

The charter further authorizes investigations by the City Council or council committees. According to section 24:

The council, the city manager, or any committee of the council so authorized by it shall have the power to inquire into the conduct of any department or office of the city and to make investigation as to city affairs and matters of municipal interest.

## **Governing Responsibilities Are Shared by Council and Staff**

Dr. John Nalbandian, professor of public administration at the University of Kansas, described a system of "shared governance" in which neither the executive (administrative) nor the legislative (council) side is totally "in charge" at city hall. Instead, they share responsibility. He said that the council-manager form of government attempts to bring both sides together to reduce conflict. The council must see itself in partnership with staff, providing direction and inspiring trust. Staff must tell the council what they think the council needs to know, in addition to responding to any of their questions and information requests. The trust allows staff to speak up and say everything that is important, including things the council may not want to hear.

### **Different Perspectives Can Lead to Conflict**

The worst politicians have no idea what an administrative perspective is like; they simply do not appreciate the erosion of staff respect that results from making political exceptions to policies, resolutions, or even ordinances when the reasons cannot be convincingly articulated. They do not understand that staff has goals and objectives, and the city could run for a long time without the governing body ever meeting, and that everytime an elected official asks for something from staff, some administrative routine is probably upset. And they do not understand that changes in policy mean changes in enforcement criteria and emphases, and if staff do not understand why a policy has changed, they are left telling citizens, "It's changed because the politicians changed it!"

John Nalbandian, "Reflections of a "Pracademic" on the Logic of Politics and Administration, *Public Administration Review*, November/December 1994, p. 532.

According to Dr. Nalbandian, the failure to understand the differences in thinking between administrative staff and the council leads to distrust and to the perception of negative motives. He said that elected officials represent the demands of citizens and special interests in the absence of direct participation. Demands from citizens are weighed against other demands

and against priorities to determine whether they are to be met. Administrative agencies, on the other hand, are created to bring knowledge and expertise systematically to bear on public problems.<sup>4</sup>

### **Council Emphasis on Oversight Increases Government Effectiveness**

In a November 1997 article, "10 Habits of Highly Effective Councils," author Carl H. Neu recommends establishing and abiding by a council-staff partnership. According to the article, one author discusses the partnership as:

One in which councils define the needs to be met and the outcomes to be achieved. . . . Councils should allow staff, within council-established limits, to define the means for achieving these ends. . . . A Council-staff linkage empowers staff to do its tasks and to be evaluated on the results produced. Councils that accept and abide by this partnership focus their energy on establishing vision, goals, and good policy and on empowering effective staff performance. Councils that do not do this will frequently fall into micromanaging.<sup>5</sup>

### **Oversight and Administration Are Equally Important**

Although city staff is responsible for administering the operations of the city government, council's oversight role is critical in ensuring the quality of those operations, provided these efforts are conducted in the open and the council acts collectively. All activities should not receive the same scrutiny, but when individual councilmembers have concerns or complaints about an issue, they should be brought to a committee or the full council for discussion. This increased oversight subjects the issues to more public scrutiny, potentially improving the quality of the decisions made.

The September 1998, *Report of the Public Safety Radio System Investigating Committee* stated that technical projects of a magnitude requiring considerable city investment with a crucial impact on the city's operations can benefit from council oversight. When the problems with the radio system were discovered, for example, one of the questions asked was "Where was the council?" The report found that staff did not routinely communicate with councilmembers on the radio project.

The same question was asked when problems were found with the city's flood response. In a sense, this reaction is justified in light of the council's responsibility for oversight. Even though the council should not be involved in doing the work, they should be aware of what is being done and why. The development and expansion of Kemper Arena and Bartle Hall reflect

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<sup>4</sup> John Nalbandian, "Tenets of Contemporary Professionalism in Local Government," *Ideal and Practice in Council-Manager Government*, (Washington D.C.: International City/County Management Association), pp. 165 and 166.

<sup>5</sup> Carl H. Neu, Jr., "10 Habits of Highly Effective Councils," *Public Management*, November 1997, p. 6.



instances of projects which were arguably more successful as a result of council oversight, combined with the administrative support and professional expertise of the city manager and his staff.

Mayor Jeff Griffin says, "You have to make it clear whose role is whose. The Council sets policy and goals, then backs away and allows management to function." Councilmember-at-Large Pierre Hascheff agrees: "Now we have less management at the council table and more accountability for the city manager."

Christopher Good, "Communication and Trust: A Recipe for Successful Council-Manager Relations, *Public Management*, January 1999, p. 13.

## **COMMUNICATION: INTERACTION IS VITAL, BUT LIMITS MUST BE RESPECTED**

Councilmembers represent the public and consequently need to maintain contact with citizens to identify their problems and concerns. This information is vital when considering the effectiveness of city government operations, and can sometimes result in needed legislation. The link between councilmembers, city staff, and the public, however, can be fraught with misunderstandings and abuse.

The committee considered various questions relating to improving communication, including the following:

- How can individual councilmembers best address the concerns of their constituents?
- What are the boundaries between individual councilmembers seeking information and giving direction to city staff?
- How can individual councilmembers seeking information avoid the appearance of giving direction?

## **Code of Ethics Requires City Staff to Cooperate with Council**

The Code of Ethics provides that it is the obligation of all employees to cooperate with members of the council in a professional manner. Section 2-1013(b) of the Code of Ordinances states:

Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidential nature of their work.



In order to formulate policy, individual councilmembers need to be able to request information from the city manager and staff. This is appropriate and should be encouraged. Not collecting the information could hamper the legislative process. Ordinances passed and resolutions adopted by the council should reflect the best information available to councilmembers. For that reason, city staff have a responsibility to provide accurate, complete, and objective information.

### **Opportunities for Misunderstanding Exist**

In any conversation, opportunities exist for both parties to misinterpret the meaning of the words used or the intentions of the other party, particularly if the parties do not routinely communicate with each other. Communication is more than the content of the speech (words). The intentions and perceptions of participants may be influenced by a variety of factors, including tone, setting, body language, who is present, and the past history of the participants. The possibility of misunderstanding is important in communications between councilmembers and city staff because they could lead to unintentional or intentional unethical behavior that, once discovered, would reflect badly on city government and the City Council.

Although the charter specifies that only the council as a whole can direct staff, the distinction between requesting information and directing staff can be unclear. For example, when an individual councilmember requests information from city staff, city staff could misinterpret the contact as more than a request. Conversely, the councilmember could, in fact, have intended to give direction.

#### **Individual Councilmembers Should Never Direct City Staff**

Consider a situation where a property owner feels he was offered less than fair value for real estate the city wishes to purchase. He contacts an individual councilmember, provides him/her with evidence supporting his claim, and requests assistance in the situation.

**Inappropriate response:** The individual councilmember contacts the city staff involved in the situation and directs them to correct it, in the citizen's favor. The matrix characterizes this as "individual council members directing city staff"—inappropriate behavior which should be vigorously prohibited.

**Appropriate response:** The individual councilmember requests information from city staff on the process by which fair value is determined. Such behavior is acceptable according to the matrix, as part of the councilmember's responsibility to "communicate with staff, the public and other councilmembers." However, a better response would be the councilmember asking the city manager to present the information to a committee of which the councilmember is a member, for the councilmember to appear before another committee and request that committee seek an explanation, or have city staff present the information to the full council. These options are included in the matrix under the council's responsibility for "oversight and policy development." The information provided by city staff is then considered by the committee or full council in a public forum. Aided by staff, the full council determines whether the process needs to be changed, possibly culminating in a public vote by the full council to approve any required policy changes (part of the matrix as the council's responsibility for "legislation").

## **Communication Considerations Could Reduce Opportunities for Misunderstandings**

While the committee is reluctant to recommend prohibiting conversations between individual councilmembers and any other city staff, it recognizes the potential for misunderstandings, as well as a concern that some staff may not recognize the inappropriateness of individual direction by a councilmember. Consequently, the committee recommends individual councilmembers use discretion when communicating with city staff. Individual councilmembers should direct most communications to the city manager, his assistants, department heads, or their designees.

Former Mayor Richard Berkley reported that when John Taylor was city manager, all communications between the City Council and city staff went through him. Others who met with the committee approved the idea of councilmembers being free to talk to any member of city staff with the understanding that as a courtesy, the councilmember would inform either the city manager or the employee's department head of the conversation. Some participants were comfortable with the contact, provided all employees understood that they should share the conversation with their superiors.

Stephen Hill, U.S. Attorney, suggested that any exchange between the council and city staff should be subject to the "untrained observer test," in which participants try to determine how an untrained observer might view the exchange.

The committee recommends discretion in communications with staff, recognizing there may be times when councilmembers feel they must communicate with city staff other than those mentioned above. However, councilmembers should be aware that any such contact increases the possibility of misinterpretation, or a response from the staff that is inaccurate, or incomplete.

**Other communication channels exist.** The committee further suggests councilmembers utilize the other departments and divisions in city government created to act as liaisons between the council and city staff. The City Auditor's Office assists the council in its oversight efforts, while the City Action Center was originally developed to assist the council in responding to citizen inquiries. Over the years, the role of the Action Center has shifted to assisting the city manager. The council might consider refocusing the Action Center on constituent services.

**Legislation regarding lobbying activities should be reviewed.** In addition to contacts with members of the public and city staff, councilmembers are also contacted by those who lobby on behalf of themselves and other entities. Mayor Pro Tem Blackwood felt that controls regarding lobbying efforts required scrutiny to "more effectively monitor and provide public disclosure of the activities of those who seek and receive significant personal benefit directly, or on behalf of their clients, from the city."

The committee's discussions on the issue of ethical behavior with regard to lobbyist activities raised a number of issues including:



- Is the current legislation regarding registration of lobbyists adequate, does it include penalty provisions for failing to register in a timely manner, and is the legislation effectively enforced?
- What are the recordkeeping requirements regarding contacts between councilmembers and lobbyists, who has the responsibility to maintain records of these contacts (the councilmember or the lobbyist), and are the recordkeeping requirements sufficient?
- Should former city staff, councilmembers, members of boards or commissions, or contractors of agencies funded by the city be required to refrain from lobbying the mayor or council for a period of time after leaving his or her previous position, and should this requirement only apply to paid lobbyists?
- Should present disclosure requirements for contributors to city elections be expanded to include all who have a contractual relationship with agencies funded by the city, as well as all those who are required to file lobbyist reports?

While the committee could not agree on the best method of resolving these issues, the committee members did agree the current legislation was weak and should be strengthened. Consequently the committee recommends reviewing the current legislation to ensure registration and disclosure mechanisms are adequate, recordkeeping requirements are sufficient, prior relationships are not used inappropriately, and lobbyist legislation is effectively enforced.

## **INDIVIDUAL DIRECTION: INAPPROPRIATE BEHAVIOR**

Individual councilmembers, after receiving information (or complaints) from citizens or interest groups, such as businesses or neighborhood associations, could be tempted to direct staff to handle the problem. This action must be discouraged because operating outside of formal channels subverts the legislative process and affects all of city government.

City staff must be made to understand the inappropriateness of individual councilmembers attempting to give direction. In a system of "shared governance," staff has a responsibility to refuse to perform unethical, illegal, or inappropriate acts, and should be protected from any negative effect arising from identifying and reporting these acts, even when suggested by members of the City Council. Staff in the lower levels of the government hierarchy may be more inclined to perform these acts because they are unaware of their responsibility to resist such attempts or unfamiliar with the limits of an individual councilmember's authority. The inappropriate actions of a single councilmember or member of city staff cast doubts on the ethics of the entire City Council and city government.

**While behavior cannot be legislated, conduct can be proscribed.** A climate of intolerance of unethical behavior must be cultivated from the top down. Sanctions exist for illegal or inappropriate acts but additional guidance is needed for the inevitable acts which might

be unethical or inappropriate, depending on the intentions of those committing them and the perceptions of those who witness them.

#### **Policy Should Only Be Set by the Full Council**

Consider a situation where an individual councilmember is part of a bid review committee. The review process has narrowed the field down to three bidders with roughly equal bids, including two firms located outside the city. The councilmember has to leave before the committee makes their final recommendation and states to staff that in his/her opinion if all three bids are equal, the local firm should be recommended to receive the contract. Later, the councilmember learns the final decision was postponed, pending further input, however the local firm is not considered the favored bidder.

**Inappropriate response:** The individual councilmember contacts the city manager and demands the committee's recommendation go to the local firm. The discussions all take place in private conversations between the councilmember, the city manager, and his staff without the involvement of any other councilmembers. Not only is this behavior clearly inappropriate (identified as an "individual councilmember directing city staff," in the matrix) but also because the councilmember is in effect making a policy decision that whenever possible, preference should be given to local vendors. Policy decisions should only be made by the full council.

**Appropriate response:** The individual councilmember may request that the city manager or the department head describe the vendor selection process to members of the committee or the full council for discussion in an open forum. With or without the description, the councilmember introduces a resolution establishing a city policy of giving preference to local vendors. Discussions of the resolution would be perfectly acceptable, included in the matrix as part of the council's responsibility for "oversight and policy development," provided the deliberations are conducted in a public forum.

#### **Standards Must Be Set at the Top**

Several of the people who met with the committee pointed out that the leaders of city government set the tone for how ethically government operates. Any improvement in ethical behavior must start at the top. One of the primary responsibilities of the Mayor, City Council, and city manager is to promote ethical behavior in words and actions. They are responsible for encouraging honorable public service, in effect, establishing the ethical climate within an organization.

Bob Kipp, former city manager, stated that there was no way to ensure that only ethical people get elected to the City Council, beyond being intolerant of unethical behavior. Kipp recommended adopting high ethical standards. "It is a matter of how tolerant or intolerant councilmembers are (as a whole) of people's behavior," he said. "Councilmembers should be intolerant of deviance from adopted ethical standards."

Rich Hood of *The Kansas City Star* discussed how common sense or judgment could be legislated. The committee agreed that morality cannot be legislated but conduct can be proscribed and values promoted or discouraged.



## Council and City Manager Should Define Appropriate Behavior

Without a definition of the standards of appropriate behavior, it is not possible to prepare procedures covering situations where those standards have been breached. In addition, councilmembers and staff cannot receive training in proper behavior. The committee determined that developing standards is a responsibility of the city's leadership. Therefore, the committee recommends the City Council see that standards of appropriate behavior are defined.

The Red Flag Commission report recommended that the council lead in creating a culture of compliance. The city auditor's report on the implementation of the commission's recommendations further suggested that the city manager draft an ordinance for council consideration updating the city's Code of Ethics to incorporate the definition of proper and improper contact between members of the City Council and city staff.

**Definitions of appropriate behavior would provide additional guidance for recognizing improper behavior.** Ethics codes are not like procedures or manuals that guide someone through a decision. Codes of ethics demand more than simple compliance; they mandate the exercise of judgement and acceptance of responsibility for decisions rendered - the real work of ethics. Acknowledging the ambiguities and complexities of public service, ethics codes offer interpretive frameworks to clarify decision-making dilemmas.<sup>6</sup>

"Doing the right thing is easy. It's figuring out what the right thing is that's hard." *Harry Truman*

Any such definition of appropriate behavior should include "belief systems." Belief systems are concise descriptions of an organization's key principles. Organizations use belief systems to inform staff of the values they are expected to uphold. Belief systems empower individuals and encourage them to search for new opportunities. They communicate core values and inspire all participants to commit to the organization's purpose.<sup>7</sup> Organizations without formal belief systems may not have clear and consistent understandings of expected behaviors.

Definitions of behavior should also include "boundary systems." Often included in a code of ethics, boundary systems are explicit descriptions of activities or behavior that are not acceptable. They set limits on behavior by providing minimum standards. The boundaries in modern organizations, embedded in standards of ethical behavior and codes of conduct, are invariably written in terms of activities that are off limits. They serve as an organization's brakes.<sup>8</sup>

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<sup>6</sup> James B. Bowman and Russell L. Williams, "Ethics in Government: From a Winter of Despair to a Spring of Hope," *Public Administration Review*, November/December 1997, pp. 522 and 524.

<sup>7</sup> Robert Simons, "Control in an Age of Empowerment," *Harvard Business Review*, March-April 1995, p. 82.

<sup>8</sup> Robert Simons, "Control in an Age of Empowerment," p. 84.

A statement of beliefs for the city could include the expectation that staff's professional recommendations to the council in an open forum are a vital part of developing public policy. A boundary system for the city could include a statement that staff will not violate the Sunshine Law. Another might be a statement that individual councilmembers will not attempt to direct staff. Similarly, staff will not accept direction from individual councilmembers or will not agree to participate in inappropriate behavior at the direction of their superiors. Finally, staff could state they will report efforts by individual councilmembers or superiors to intimidate or coerce staff to engage in unethical behavior to the proper authorities.

#### **The Ethical Path**

Business ethics expert Raymond Hilgert of Washington University has five tests for ethical behavior - guidance to help discern whether an act is right or wrong.

1. **Legal compliance:** Is the action lawful?
2. **Public knowledge:** If the act was revealed to a loved one or described on the front page of a newspaper, would it cause embarrassment?
3. **Long-term consequences:** Does the action achieve short-term benefit but wreck long-term goals?
4. **Motives:** Does the act help an organization or is it really self-serving?
5. **Inner voice:** What do one's innermost values say about the action - is it wrong?

**Written set of job descriptions for councilmembers should be developed.** The committee considered how best to handle requests from the public that are beyond the primary responsibilities of the council (for example, placing a stop sign at a particular intersection). Dr. Nalbandian suggested that if constituents call about problems that are administrative in nature, councilmembers should not attempt to solve the problem. They should refer it to staff where it can be weighed against existing policy and priorities, with subsequent communication with the citizen and/or councilmember.

Attempting to solve the problem causes distrust among other councilmembers and staff. Dr. Nalbandian said that once councilmembers move away from the policy role, their roles become defined as "constituent services." Rich Hood of *The Kansas City Star* suggested the public be educated on the appropriate roles of city officials. He pledged the help of the media, but pointed out that the roles and responsibilities must be developed first.

**Additional role for the mayor pro tem.** Traditionally, the mayor conferred upon the mayor pro tem the responsibility to establish a tone of ethical conduct for the council by serving as an unofficial ethics advisor. These efforts were primarily demonstrated in the mayor pro tem's responsibility to review and approve councilmember expense reports. With the elimination of this financial oversight responsibility, the mayor pro tem lost an effective conduit to monitoring the ethical behavior of the councilmembers. Consequently, the committee recommends

formalizing this responsibility and recommends the necessary legislation be adopted prior to the upcoming elections.

As a means of educating both the public, new councilmembers, and city staff, the committee recommends the development of a written job description for councilmembers and further recommends the document formally recognize the mayor pro tem's responsibility to serve as an ethical advisor to the other councilmembers. The written description would provide a method of assisting new councilmembers in understanding their duties and responsibilities and could be a method of informing city staff and the public of what a councilmember can and cannot do when requested by the public.

### **Sanctions Should Be Strengthened**

The Code of Ethics contained in the city's Code of Ordinances includes penalties and other sanctions for ethics violations. According to section 2-1016, these include fines of between \$1 and \$500, imprisonment for up to six months, or both; restitution; administrative sanctions such as suspension or removal from office; and voluntary resignation.

The committee believes that additional sanctions are needed to provide pressure and support to councilmembers and city staff to behave ethically and report those individuals who do not. These sanctions should be applied to all parties involved in committing unethical acts. Recognizing the fact that an individual councilmember or even the full council cannot fire city staff, they should not feel compelled to commit any acts that are illegal or unethical at the direction of an individual councilmember. Staff should also understand they can resist similar requests by their colleagues and supervisors and should report any requests to the proper authorities.

City staff should understand that the consequences of bowing to pressure to commit unethical acts are worse than not bowing (or reporting) such pressures. Doing something known to be wrong when directed to do so can make an employee just as corrupt as the person making the request.

**Role of the Municipal Ethics Commission should be reviewed.** Section 2-1016(e) of the city's Code of Ethics also states that:

No penalty or other sanction provided for under this section shall be imposed against any member of the city council, including the mayor, the city manager, any assistant city manager, any department head, the director of records or the city auditor, in the absence of a hearing and a determination of the municipal officials ethics commission that a provision of this division has been violated, and a recommendation of the commission that such violation be prosecuted in a court of law as provided under this division.

While the inclusion of this requirement was seen as an attempt to include due process in the code of ethics, the committee discussed the effective use of advisory commissions such as the Missouri Ethics Commission to provide assistance in ensuring ethical government.



Recently, the Unified Government of Wyandotte County and Kansas City, Kansas entered into a one-year contract with the University of Kansas (KU), to prepare and conduct ethics training programs for elected, appointed and civil service staff. In addition, KU has designated H. George Frederickson to serve as a part-time ethics administrator for the Unified Government. Frederickson, a professor of Public Administration and Government teaches ethics at KU and has consulted on the formation of the Unified Government for more than three years.

Advisory opinions are also provided. According to the Code of Ethics adopted by the Unified Government, the ethics administrator accepts complaints and suggestions; may resolve minor ethical matters and questions as directed by the legislative auditor; and may conduct all investigations of an alleged violation of the Ethics Code, at the direction the Ethics Commission. In addition to recommending sanctions to the legislative auditor for those found to have violated the Ethics Code, the ethics administrator provides advisory opinions to members of the public, elected officials, or employees who have doubts as to the applicability of the code of ethics and make written requests for clarification.

The advisory opinion, which might be based in part on assistance from the Unified Government Attorney, is to be provided within a reasonable period of time. While the opinion itself is then made available to the public upon request, the name of the person requesting the opinion, the names of the person or business entities mentioned in the opinion, and any factual information that would tend to identify the person or business entities involved is not disclosed.

The committee feels that utilization of an advisory committee or an ethics administrator might be considered for Kansas City government. The committee recommends consideration be given to reviewing the nature and efficacy of the city's continued utilization of the Municipal Ethics Commission to investigate allegations of unethical or inappropriate behavior by members of the City Council or other senior government officials.

### **Protection Mechanisms Should Also Be Established**

Members of the committee expressed interest in protection mechanisms for city staff. The consensus was that the committee did not want city staff to live in fear of not doing whatever individual members of the council asked.

The January 1997 Red Flag Commission report recommended a procedure be developed for "all parties to follow when someone believes that the proper lines of authority and responsibility have been breached. No one should be confronted with a choice between doing something they judge inappropriate or the loss of their position."<sup>9</sup> Without defining appropriate standards of behavior, it is not possible to determine what steps to take when the standards of behavior have been breached. As a result, no such procedures have been established.

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<sup>9</sup> *Red Flag Commission Report*, p. 1.



Protection mechanisms, such as whistleblower protections, were also recommended by Stephen Hill, as one method of allowing the staff to feel free to report abuses by supervisors or others in authority. While Hill acknowledged these laws are sometimes exploited, having them in place helps empower the staff to do the right thing without fear for their jobs.

**A hotline is being developed.** The Red Flag Commission's report concluded that "no system can provide a perfect defense against human cupidity." The commission indicated that "while someone with a larcenist heart likely can break any system, we want to encourage others to report such behavior."<sup>10</sup> As a result, the commission recommended the establishment of a confidential ethics hotline.

The confidentiality of calls is crucial to the success of a hotline for two reasons. First, persons intimidated by a supervisor or elected official might not come forward without a guarantee that records were confidential. Second, confidentiality would protect against public embarrassment generated by false or unfounded accusations.

The Red Flag Commission's recommendation to establish a confidential ethics hotline could not be fully implemented until the confidentiality of calls was guaranteed. The Missouri legislature revised the state's Sunshine Law during the 1998 legislative session. Among the revisions approved was a provision that makes confidential citizen and employee reports of potential abuse or wrongdoing to a municipal hotline a closed record.

The Administrative Services Ethics Committee is in the process of developing procedures for the hotline. The plan will address who will review the calls; to whom complaints will be forwarded for investigation; procedures for publicizing the hotline number; and the locations at which the hotline number will be posted. The Council Ethics/Relations Committee recommends the city implement a confidential hotline.

### **Education and Training Is Essential**

Continuing education about ethical considerations is important to encourage ethical decision-making. The Red Flag Commission recommended orientation for new councilmembers and a training program for all city staff. The City Auditor's *Report on Red Flag Recommendations* found that orientation for one new councilmember was conducted but found problems with overall training efforts. Although various perspectives and issues were discussed, the training did not specifically define appropriate behavior.

The committee agrees these orientations should continue and should include definitions and examples of inappropriate behavior, as developed by the city. The committee also recommends the addition of an in-house portion to instruct new councilmembers on the ordinance process. We further recommend this training be presented by staff from the Law Department.

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<sup>10</sup> *Red Flag Commission Report*, p. 4.

Stephen Hill reported that in the Justice Department, ethical behavior training starts from the first day on the job. He suggested that anything that could create a culture of ethical conduct be recommended.

**Continuing ethics education and "sensitization" are considered important.**

Continuing education about ethics and "sensitization" are considered important aspects of recognizing ethical dilemmas and encouraging ethical decision-making. Talking about ethics sensitizes people to make decisions in ethical ways. A 1994 article on government ethics pointed out that "ethical behavior is learned behavior, and practice improves performance." The authors recommended that managers develop strategies to encourage discussion of ethics issues, and that ethics training address both avoiding ethical problems and improving how government serves the public interest. In fact, the authors assert that "an ethical environment is essential to facilitating decision making in the public interest."<sup>11</sup>

**Staff Should Also Have Ethics Training**

The Red Flag Commission had recommended that "there must be a required and annual ethics training program with its focus on realistic scenarios for all city staff."<sup>12</sup> A staff ethics training program has not yet been completed, but the program has begun. The city auditor's review of the implementation of the Red Flag Commission report recommended that a staff ethics training program immediately be included in the new employee orientation and provided to staff, contract employees, appointed members of boards and commissions, elected officials, and paid and unpaid staff. It further recommended annual ethics refresher training be provided to all city employees. Limits to council authority should be specifically incorporated into the training materials, along with procedures to follow when a councilmember exceeds those limits or superiors ask staff to tolerate or commit unethical acts. The committee agrees with all these recommendations and further recommends ethics training be extended to staff from city funded agencies.

**THE COMMITTEE MAKES THE FOLLOWING RECOMMENDATIONS**

The committee's recommendations are directed at three of the four City Council activities represented in the matrix on page 3 and discussed throughout the report. The committee believes that council and staff have clear guidance in only one of those areas now - legislation. The first four recommendations are designed to provide additional guidance about council oversight of city operations, individual communications between councilmembers and staff about constituent inquiries and other matters, and contacts between councilmembers and area lobbyists. The committee's testimony and discussions showed that little guidance presently exists in these two

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<sup>11</sup> Stephen Bonczek and Donald Menzel, "Achieving the Ethical Workplace," *Public Management*, March 1994, pp. 15 and 20.

<sup>12</sup> *Red Flag Commission Report*, p. 2.

areas. The committee also makes recommendations to provide additional protections against direction of city staff by individual councilmembers or other city staff. The last three recommendations are designed to strengthen deterrence of this inappropriate activity.

The committee recommends that the City Council enact legislation to accomplish each of the following recommendations.

1. Introduce a resolution to be sent to a standing council committee establishing the committee's responsibility to develop a job description for the position of city councilmember and formally recognize the role of the mayor pro tem as ethical advisor to the other councilmembers. An important purpose of the job description should be to clarify councilmember roles in conducting oversight of city operations and providing individual constituent services, as well as enacting legislation. An ordinance should be presented to the Mayor and City Council by March 30, 1999 with implementation to be completed by May 1, 1999.
2. Require the city attorney to provide a formal orientation to incoming councilmembers on the ordinance process as established by the charter and other laws, and on councilmembers' rights and responsibilities as elected officials.
3. Require the city manager to assure that the city's Code of Ethics is widely publicized and that annual ethics training, including definitions of appropriate and inappropriate contact between councilmembers and staff, is provided to all city and contract employees, elected officials, and appointed members of boards and commissions.
4. Review existing legislation regarding lobbyist activities to ensure it provides adequate safeguards to prevent, detect, and punish inappropriate contacts between individual lobbyists and members of the City Council.
5. Implement a hotline system for reporting and addressing complaints of illegal, unethical, or inappropriate behavior by members of the City Council or city staff.
6. Establish whistle-blower protection for city staff who, in good faith, report behavior that the employee could reasonably believe to be illegal, unethical, or inappropriate committed by members of the City Council or city staff.
7. Review the role of the Municipal Ethics Commission to require it to serve an effective role in investigating allegations of unethical or inappropriate behavior by members of the City Council and other senior government officials.